

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

EXAMWORKS, a Delaware limited
liability company,

Plaintiff,

v.
TODD BALDINI, an individual,
ABYGAIL BIRD, an individual,
LAWRENCE STUART GIRARD, an
individual, PAMELLA TEJADA, an
individual, ROE CORPORATION, and
DOES 1 through 10,

Defendants.

No. 2:20-CV-00920-KJM-DB

ORDER

Plaintiff ExamWorks, LLC's ("ExamWorks") moves for a temporary restraining order accompanied by an order preserving evidence, discovery on expedited basis and sealing of documents provided to the court on May 5, 2020. On March 8, 2020 the court heard telephonic argument on the motions. Attorneys Robert Shwarts, Catherine Lui, Johanna Jacob, and Nathan Shaffer appeared on behalf of plaintiff; defendant, Abygail Bird, appeared pro se. Defendants Stuart Girard, Todd Baldini and Pamella Tejada did not appear. As discussed at hearing, Ms. Lui has now filed a declaration confirming prior electronic notice to all defendants of the telephonic hearing. Catherine Lui Decl., ECF No. 16.

1 After argument, the court indicated its intent to grant the temporary restraining
2 order and the request to preserve evidence, as well as grant sealing in part; it took the matter of
3 expedited discovery under submission and resolves all of the motions here. The court, having
4 considered the arguments of counsel and the papers submitted with this matter, and for good
5 cause shown, GRANTS the motions for a temporary restraining order, and discovery on
6 expedited basis. The court GRANTS IN PART plaintiff's request to seal documents as explained
7 below.

8 Defendants Lawrence Stuart Girard, Todd Baldini, Pamella Tejada and Abygail
9 Bird (collectively, "defendants") are HEREBY NOTIFIED they have the right to apply to the
10 court for modification or dissolution of this order on two (2) days' notice.

11 I. TEMPORARY RESTRAINING ORDER

12 In order to obtain a temporary restraining order, a party must make the same
13 showing as required for a preliminary injunction by demonstrating "that he is likely to succeed on
14 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
15 balance of equities tips in his favor, and that an injunction is in the public interest." *Stormans,*
16 *Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def. Council,*
17 *Inc.*, 555 U.S. 7, 20 (2008)). Further, "[a] preliminary injunction [or temporary restraining order]
18 is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised
19 and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for Wild Rockies v.*
20 *Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quotation and alteration omitted).

21 The court finds that the applicable standard is met and that ExamWorks is entitled
22 to a temporary restraining order because ExamWorks has shown (1) likely success on the merits
23 of its trade secret misappropriation claims based on evidence that defendants transmitted and took
24 such trade secret material into their possession in a manner contrary to ExamWorks' written
25 policies and applicable employment agreements with plans to use the information to compete
26 against ExamWorks; (2) use or disclosure of such material by defendants will damage
27 ExamWorks; (3) such damage is likely to be irreparable because it will be in the form of lost
28 business, lost customers, loss of goodwill, and similar harms that are difficult or impossible to

1 compensate with damages; (4) such irreparable harm is threatened and imminent such that a
2 temporary restraining order is necessary to preserve the status quo until this matter can be brought
3 on for hearing on ExamWorks' motion for preliminary injunction; (5) the balance of hardships
4 tips strongly in ExamWorks' favor because defendants have no legitimate interest in the use of
5 ExamWorks' trade secrets, and (6) the public interest favors injunctions to protect trade secrets.

6 Accordingly, defendants are ENJOINED as follows:

7 1. Defendants are ordered to immediately take all steps to preserve evidence relevant
8 to the allegations of the complaint and/or their employment with ExamWorks, including, but not
9 limited to, any email or cloud storage accounts, computers, servers, USB thumb drives, and any
10 other electronic devices that contain relevant electronic evidence.

11 2. Defendants are further ordered, at their own expense, to make any electronic
12 device or account that contains relevant electronic evidence available within 48 hours of this
13 order to a neutral and mutually agreed-upon third-party forensic expert (the "Forensic Expert") in
14 order to create a forensically sound image of said device, or, in the alternative, turn over the
15 actual electronic device to the Forensic Expert. Such image or device is to be accessed or
16 inspected only at such time as the parties stipulate to an acceptable forensic inspection protocol or
17 upon further order of the court allowing such inspection.

18 3. Defendants and all persons in active concert or participation with them are hereby
19 enjoined from acquiring, accessing, disclosing or using, or attempting to acquire, access, disclose
20 or use any trade secrets or confidential information of ExamWorks, or derivatives thereof,
21 including, but not limited to, any documents that discuss, forward, reference or incorporate the
22 trade secrets or confidential information of ExamWorks. For purposes of this order, "trade
23 secret" means all nonpublic "forms and types of financial, business, scientific, technical,
24 economic, or engineering information, including patterns, plans, compilations, program devices,
25 formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes,
26 whether tangible or intangible, and whether or how stored, compiled, or memorialized physically,
27 electronically, graphically, photographically, or in writing." See 18 U.S.C. § 1839(3). For

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1 purposes of this order, "confidential information" means all other information belonging to or
2 otherwise relating to the business of ExamWorks or its affiliates that is not generally known.

3 4. Defendants and all persons in active concert or participation with them are hereby
4 ordered to return all ExamWorks trade secrets and confidential information in their possession,
5 custody, or control to the office of counsel for ExamWorks (Catherine Lui, Orrick, Herrington &
6 Sutcliffe LLP, 400 Capitol Mall # 3000, Sacramento, CA 95814) within 48 hours of entry of the
7 court's order to the extent there are not materials already turned over to the Forensic Expert.

8 5. Once the preservation requirements in Paragraphs 1 and 2 are complete,
9 defendants are ordered, at their own expense, to work with the Forensic Expert to permanently
10 and forensically remove from all of their computers, servers and other electronic devices any
11 trade secrets or confidential information of ExamWorks, or derivatives thereof, including, but not
12 limited to, any documents that discuss, forward, reference, or incorporate the trade secrets or
13 confidential information of ExamWorks, as defined in paragraph 3.

14 6. Defendants are hereby enjoined from conducting business with any individual or
15 entity that did business with ExamWorks before defendants stopped working there to the extent
16 those individuals or entities are identified in the trade secret materials misappropriated by
17 defendants, including, without limitation, ExamWorks' clients, medical providers and doctors.

18 The above temporary restraining order shall be effective immediately and no bond is
19 required at this time.

20 II. **ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

21 Defendants are ORDERED to appear telephonically or by videoconference, with
22 the exact manner of appearance to be confirmed, on May 22, 2020, at 10 a.m. before the
23 undersigned to show cause why a preliminary injunction should not be granted and why the
24 temporary restraining order set forth above should not be extended such that defendants are
25 restrained and enjoined pending trial as follows:

26 1. Defendants are ordered to immediately take all steps to preserve evidence relevant
27 to the allegations of the complaint and/or their employment with ExamWorks, including, but not
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1 limited to, any email or cloud storage accounts, computers, servers, USB thumb drives, and any
2 other electronic devices that contain relevant electronic evidence.

3 2. Defendants are further ordered, at their own expense, to make any electronic
4 device or account that contains relevant electronic evidence available within 48 hours of this
5 order to a neutral and mutually agreed-upon third-party forensic expert (the “Forensic Expert”) in
6 order to create a forensically sound image of said device, or, in the alternative, turn over the
7 actual electronic device to the Forensic Expert. Such image or device is to be accessed or
8 inspected only at such time as the parties stipulate to an acceptable forensic inspection protocol or
9 upon further order of the court allowing such inspection.

10 3. Defendants and all persons in active concert or participation with them are hereby
11 enjoined from acquiring, accessing, disclosing or using, or attempting to acquire, access, disclose
12 or use any trade secrets or confidential information of ExamWorks, or derivatives thereof,
13 including, but not limited to, any documents that discuss, forward, reference or incorporate the
14 trade secrets or confidential information of ExamWorks. For purposes of this order, “trade
15 secret” means all nonpublic “forms and types of financial, business, scientific, technical,
16 economic, or engineering information, including patterns, plans, compilations, program devices,
17 formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes,
18 whether tangible or intangible, and whether or how stored, compiled, or memorialized physically,
19 electronically, graphically, photographically, or in writing.” *See 18 U.S.C. § 1839(3).* For
20 purposes of this order, “confidential information” means all other information belonging to or
21 otherwise relating to the business of ExamWorks or its affiliates that is not generally known.

22 4. Defendants and all persons in active concert or participation with them are hereby
23 ordered to return all additional ExamWorks trade secrets and confidential information in their
24 possession, custody, or control to the office of counsel for ExamWorks (Catherine Lui, Orrick,
25 Herrington & Sutcliffe LLP, 400 Capitol Mall # 3000, Sacramento, CA 95814) within 48 hours of
26 entry of the court’s order to extent there are not materials already turned over to the Forensic
27 Expert.
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1 5. Once the preservation requirements in paragraphs 1 and 2 are complete,
2 defendants are ordered, at their own expense, to work with the Forensic Expert to permanently
3 and forensically remove from all of their computers, servers, and other electronic devices any
4 trade secrets or confidential information of ExamWorks, or derivatives thereof, including, but not
5 limited to, any documents that discuss, forward, reference, or incorporate the trade secrets or
6 confidential information of ExamWorks, as defined in paragraph 3.

7 6. Defendants are hereby enjoined from conducting business with any individual or
8 entity that did business with ExamWorks before defendants stopped working there to the extent
9 those individuals or entities are identified in the trade secret materials misappropriated by
10 defendants, including, without limitation, ExamWorks' clients, medical providers, and doctors.

11 This order to show cause and all papers supporting the requested injunction shall
12 be served on defendants no later than May 13, 2020, by hand delivery or via electronic delivery.
13 Plaintiff will continue to have the obligation of ensuring defendants, individually or through
14 counsel, are aware of the preliminary injunction hearing and filing deadlines.

15 Any opposition papers to the requested injunction shall be filed with the Clerk no
16 later than May 15, 2020, at 4:00 p.m., and, if any documents are submitted in camera and not
17 filed via the CM/ECF system, those documents shall be served electronically on ExamWorks'
18 counsel at that time.

19 Any reply papers in support of the requested injunction shall be filed no later than
20 May 18, 2020 at 4:00 p.m. and served by electronic delivery on defendants or their counsel at that
21 time.

22 The temporary restraining order granted herein on this day, May 8, 2020, shall
23 expire on May 22, 2020, absent further order of this court.

24 **III. DISCOVERY ON EXPEDITED BASIS**

25 The court has also considered plaintiff's motion for expedited discovery and is
26 satisfied defendants have received notice and have had sufficient time, even under the expedited
27 circumstances, to respond to the motion. Plaintiff's will continue to have the obligation of
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1 ensuring defendants, individually or through counsel, are served with exhibits A–D to
2 ExamWorks' motion.

The court having read and considered the motion and supporting documents thereto, finds it is not necessary to wait until June 5, 2020 for the scheduled hearing on this motion and so submits the motion now on the papers presently before it. ExamWorks has shown good cause for expedited discovery to allow it to pursue this action to protect its trade secrets, there currently is no showing of any prejudice to defendants, and expedited discovery will allow for development of the record by the time of the preliminary injunction hearing set above.

9 Accordingly, good cause appearing, the court GRANTS ExamWorks' motion as
10 follows: Defendants are ORDERED to appear for deposition at a mutually agreeable place and
11 time but in no event greater than 14 days from the date of this order. Defendants also are
12 ORDERED to respond to plaintiff's request for production of documents and things, requests for
13 inspection and interrogatories no later than 10 days from the date of this order.

IV. REQUEST TO FILE UNDER SEAL

Finally, plaintiff's request to file under seal also is before the court. Having considered the request to file under seal, the declarations in support thereof, the pleadings on file, and any other relevant materials, the request to file under seal will be GRANTED IN PART.

18 Plaintiff shall submit to the court by the close of business on May 8, 2020,
19 proposed redactions of the declarations covered by the request to seal. Following the court's
20 review of the proposed redactions, it will issue a final order resolving the request to seal.

V. SUMMARY

22 | The court orders as follows:

- 23 (1) The Motion for a temporary restraining order is GRANTED;

24 (2) The Motion for discovery on expedited basis is GRANTED;

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26 (3) The Request to seal documents is GRANTED IN PART, subject to the explanation

27 provided above;

1 (4) The Ex parte application to shorten time for hearing on motion to expedited discovery
2 is DENIED as MOOT.

3 This order resolves ECF Nos. 4, 5, 6 and 7.
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5 IT IS SO ORDERED.

6 DATED: May 8, 2020.

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8 CHIEF UNITED STATES DISTRICT JUDGE
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